

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 3/16/05 -MAR

Division: County Attorney's Office

Bulk Item: Yes X No

Department: County Attorney's Office

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING:

Approval of settlement agreement in *Sierra Club, John Wade, & Monroe County (intervenor) v. DCA & Miami-Dade County*.

ITEM BACKGROUND: Community activists challenged a change in Dade County's comprehensive plan which would have permitted expanded growth around Krome Avenue. The County intervened on the side of the challengers. An agreement regarding all issues has been reached.

PREVIOUS RELEVANT BOCC ACTION: On August 20, 2003, the Board authorized intervention by a 4-0 vote, with one abstention, in Resolution 341-2003.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

Special Land Use Counsel Derek Howard of Morgan & Hendrick recommends approval.

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY:

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:



JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

Hugh J. Morgan
James T. Hendrick
Robert Cintron, Jr.
Derek V. Howard

LAW OFFICES
MORGAN & HENDRICK
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W. Curry Harris
(1907-1988)
Hilary U. Albury
(1920-1999)

February 2, 2005

VIA FACSIMILE

Mr. Robert Shillinger, Esq.
Assistant County Attorney
502 Whitehead Street
Courthouse Annex, 3rd Floor
Key West, FL 33040

Re: *Krome Avenue (Case No. 03-0150GM)*

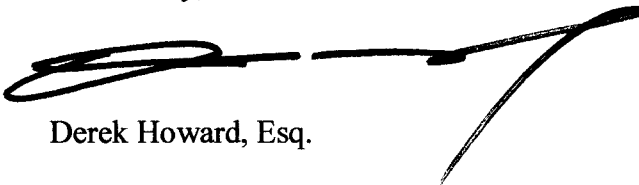
Dear Bob:

The parties in the above-referenced matter have finalized the proposed stipulated settlement agreement, which needs to go before the Board of County Commissioners for formal approval. I am enclosing a copy of the proposed agreement.

The board of Miami-Dade County will consider the proposed agreement at its meeting on March 1, 2005. We therefore need to set the proposed agreement on our board's agenda for February or March.

If you have any questions regarding this or any other matters, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Derek Howard', with a long horizontal stroke extending to the right.

Derek Howard, Esq.

Enclosure

cc: Timothy McGarry (w/encl.)

RECEIVED

FEB 04 2005

MONROE COUNTY ATTORNEY

WHEREAS, pursuant to Section 163.3184(9)(a), Florida Statutes, Petitioners initiated the above-styled formal administrative proceeding alleging that Application 16 of the Plan Amendment is not “in compliance” with Chapter 163, Florida Statutes (the “Petition”); and

WHEREAS, Monroe County filed a petition to intervene in this action and adopted the Petition, and the Administrative Law Judge granted the petition to intervene on December 16, 2003; and

WHEREAS, Respondents dispute the allegations of the Petition; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so,

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. **Definitions.** As used in this agreement, the following words and phrases shall have the following meanings:

- a. **Act:** The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes
- b. **Agreement:** This Settlement Agreement
- c. **Department or DCA:** The Florida Department of Community Affairs
- d. **DOAH:** The Florida Division of Administrative Hearings
- e. **In compliance or into compliance:** The meaning set forth in Section 163.3184(1)(b), Florida Statutes
- f. **Intervenor:** Monroe County

- g. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the Plan Amendment in compliance, attached hereto as Exhibit A
 - h. Petition: The Petition for Formal Administrative Hearing filed by Sierra Club and John S. Wade, Jr., and adopted by Monroe County
 - i. Petitioners: Sierra Club and John S. Wade, Jr.
 - j. Plan Amendment: The October 2001-02 Cycle Applications to Amend the Miami-Dade County Comprehensive Development Master Plan, adopted as Ordinance No. 02-198 on October 10, 2002
 - k. Remedial Action: Adoption of the Remedial Plan Amendment.
 - l. Remedial Plan Amendment: An amendment to the plan, which the local government must adopt to complete the Remedial Action. A Remedial Plan Amendment adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the language attached hereto as Exhibit B, or be otherwise acceptable to the Department.
 - m. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.
2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.
3. Negotiation of Agreement. The Department issued its Notice of Intent to find the Plan Amendment in compliance. Petitioners and Intervenor filed Petitions challenging Application 16 of the Plan Amendment. The parties conferred and agreed to resolve the issues in the Petition through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties.

4. Dismissal. If Miami-Dade County completes the Remedial Action required by this Agreement, the Department shall issue a Notice of Intent addressing the Remedial Plan Amendment. The Department shall file the Notice of Intent with DOAH. If Miami-Dade County adopts the Remedial Plan Amendment in the form set forth in Exhibit B, the Parties shall file a joint request for DOAH to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes. Petitioners and Intervenor shall not challenge a determination that the Plan Amendment and the Remedial Plan Amendment are in compliance; provided, however, that if Miami-Dade County adopts a Remedial Plan Amendment in a form other than that set forth in Exhibit B, Petitioners and Intervenor reserve their rights to challenge the Plan Amendment and Remedial Plan Amendment.

5. Description of Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Notice of Intent, which identifies the Plan Amendment as being in compliance. Exhibit B contains the Remedial Plan Amendment, which must be adopted for resolution of the issues herein. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Action is accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. Miami-Dade County agrees to consider for adoption by formal action of its governing body the Remedial Plan Amendment set forth in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Additional Amendment. Within 60 days after execution of this Agreement by the parties, Miami-Dade County shall consider for adoption the Remedial Plan Amendment. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, Miami-Dade County shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. Miami-Dade County shall also submit one each copy to the South Florida Regional Planning Council and to any other unit

of local or state government that has filed a written request with Miami-Dade County for a copy of the Remedial Plan Amendment, and copies to Petitioners and Intervenor. The Remedial Plan Amendment shall be transmitted to the Department along with a letter that describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, shall not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendment and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendment, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Plan Amendment satisfies this Agreement, the Department shall issue a Notice of Intent addressing the Remedial Plan Amendment as being in compliance. The Department shall file this notice with DOAH and shall move to have this proceeding dismissed.

b. Not in Compliance: If the Remedial Plan Amendment does not satisfy this Agreement, the Parties reserve the right to proceed to hearing in this matter.

10. Effect of Amendment. Adoption of the Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by Miami-Dade County at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in Miami-Dade County's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve any party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated into this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon final execution by the parties.

17. Filing and Continuance. The Department shall file this Agreement with DOAH after execution by the parties, along with a request to stay the administrative proceeding in this matter in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties, and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind Miami-Dade County in the exercise of governmental discretion, which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

SIERRA CLUB

DEPARTMENT OF COMMUNITY AFFAIRS

SECRETARY

Date

Date

Senior Attorney

JOHN S. WADE, JR.

MIAMI-DADE COUNTY

John S. Wade, Jr.

COUNTY MANAGER

Date

Date

Attest:

Clerk

Senior Attorney

Dennis A. Kerbel
Assistant County Attorney

MONROE COUNTY

COUNTY MANAGER

Date

Attest:

Clerk

Morgan & Hendrick
County Attorney

EXHIBIT B

REMEDIAL PLAN AMENDMENT

1. Interpretation of the Land Use Plan Map: Policy of the Land Use Element

In the "Transportation" section at I-45, after "In particular, extension or widening...may occur only if indicated on the LUP map," insert the following:

Miami-Dade County supports the improvement of Krome Avenue to make the roadway safer without encouraging development in the surrounding areas that is not contemplated by the CDMP's Land Use Plan Map, as of April 2004. Krome Avenue was designated as a Major Roadway on the Land Use Plan Map to allow the Florida Department of Transportation (FDOT) to prepare a study to analyze all feasible alternatives to meet pressing public needs for the road and capacity for pre-existing development permits and CDMP designations, and to take action consistent with such analysis, including widening the road or any specific segment thereof up to 4 lanes and implementing the Krome Avenue Action Plan. The designation was not made to provide capacity for additional development permits or to support CDMP amendments to increase development potential or densities. Krome Avenue is a state roadway, under the jurisdiction of FDOT. FDOT is solely responsible for maintaining Krome Avenue and for designing and funding any improvements, modifications, or other construction of the roadway. Miami-Dade County will not fund any additional improvements, modifications, or other construction of Krome Avenue.

2. Future Traffic Circulation Map Series

At II-13, after "Figure 1, Planned Year 2015 Roadway Network....where future throughways will be located to serve future travel demand," insert the following:

Miami-Dade County supports the improvement of Krome Avenue to make the roadway safer without encouraging development in the surrounding areas that is not contemplated by the CDMP's Land Use Plan Map, as of April 2004. Krome Avenue was designated as a 4-lane roadway on Figure 1 to allow the Florida Department of Transportation (FDOT) to prepare a study to analyze all feasible alternatives to meet pressing public needs for the road and capacity for pre-existing development permits and CDMP designations, and to take action consistent with such analysis, including widening the road or any specific segment thereof up to 4 lanes and implementing the Krome Avenue Action Plan. The designation was not made to provide capacity for additional development permits or to support CDMP amendments to increase development potential or densities. Krome Avenue is a state roadway, under the jurisdiction of FDOT. FDOT is solely responsible for maintaining Krome Avenue and for designing and funding any improvements, modifications, or other construction of

the roadway. Miami-Dade County will not fund any additional improvements, modifications, or other construction of Krome Avenue.

3. Policies 3F, 3G, 3H

Replace “one mile” with “two miles (excluding lands within the Urban Development Boundary as of April 2004).”

4. Add Policy 3I

Miami-Dade County shall support the improvement of Krome Avenue to make the roadway safer without encouraging development in the surrounding areas that is not contemplated by the CDMP’s Land Use Plan Map, as of April 2004. Any additional capacity or anticipated additional capacity resulting from the improvement, modification, or other construction of Krome Avenue shall not be a basis for additional development permits or CDMP amendments to increase development potential or densities. The redesignation of Krome Avenue shall not be deemed to modify, limit or impact CDMP goals, policies, and objectives designed to preserve the County’s unique agricultural lands and natural environment. Accordingly, all county boards, agencies, and officials shall consider impacts and compatibility of proposed developments as required by applicable CDMP provisions and County regulations, including, without limitation, the following CDMP policies intended to discourage urban sprawl and development in areas designated Agriculture, Open Land, or Environmental Protection: Policies 1P, 1Q, 2B, 8F, 8G, and 8H of the Land Use Element; Policy 4C of the Transportation Element; Policies 1A and 1H of the Water, Sewer and Solid Waste Element; and Policy 5A of the Capital Improvements Element.

5. Add a Policy 3J

If the Florida Department of Transportation does not determine, and inform the County by January 1, 2008, in a letter to be kept on file with the Department of Planning & Zoning, that the segment of Krome Avenue between S.W. 136th Street and S.W. 296th Street should be widened to more than 2 lanes, then the designation of that segment shall revert to Minor Roadway on the Land Use Plan Map and to 2 lanes on Figure 1, Planned Year 2015 Roadway Network, in the Future Traffic Circulation Map Series.